IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1572/2006
(Mani Ram Vs. State of Rajasthan)

Date of Order : 06/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Ramesh Guleria for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyaya, public prosecutor accepts notice. With the consent of parties, this criminal miscellaneous petition under Section 482 Cr.P.C. is heard and decided at the admission stage.

By the instant petition under section 482 Cr.P.C. the petitioner has challenged order dated 23.11.2006 passed by Judicial Magistrate, Gharsana (for short 'the trial court' hereinafter) whereby the application filed by the petitioner under Section 457 Cr.P.C., seeking interim custody of the tractor bearing No. PB-30-1057 attached with trolley was allowed and the vehicle was ordered to be released in favour of the petitioner provided he furnishes a bank guarantee of Rs. 1 lac with other

conditions mentioned in the order impugned.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that largely the wood which was being transported in the tractor trolley in question was of Babul which is commonly known as Kikar. It is also contended that as per the Notification dated 19.1.1991 issued by the State Government, “babul” has been exempted from the forest produce under the Rajasthan Forest (Produce Transit) Rules, 1957 (for short 'the Rules, 1957 hereinafter). Learned counsel further submits that the petitioner is not an accused in the case. The tractor in question alleged to have been found carrying trees of Babul and Khejri. So far as Khejri is concerned, it may be in contravention of the Forest Act, but so far as the Kikar is concerned, it has been exempted by the notification of the State Govt. and therefore, directing the petitioner to furnish a bank guarantee would virtually amount to denying the custody of the vehicle. The petitioner is not in a position to furnish the bank guarantee and the said tractor and trolley is the only source of his livelihood and therefore, submits that the order impugned directing the petitioner to furnish bank guarantee may be modified to the solvent security.

Rule 3 of the Rules, 1957 pertains to exemption from forest produce and provides that in exercise of the powers conferred under the proviso to rule 2 of the Rules, 1957, the

State Government exempts transportation of forest produce of the following species for destination within the State of Rajasthan; namely Eucalyptus, Su-Babul, Ardu, Vilaiti Babul, Israeli Babul, Deshi Babul and Shisham.

This Court in Jeet Singh Vs. State of Rajasthan 2006 (2) R.Cr.D. 274 (Raj.) without going into the question as to whether the goods being transported in the vehicle, in fact, is a forest produce or not as defined in the Rajasthan Forest Act, held that the condition of furnishing bank guarantee is onerous and accordingly the condition of bank guarantee has been set aside and vehicle has been ordered to be released on Supardginama.

Having regard to the facts and circumstances of the case, it is yet to be established in the trial as to whether the wood carried in the vehicle or transported, are forest produce or not, more particularly keeping in view the Notification dated 19.1.1991 as also Rule 3 of the Rules, 1957 by which the babul is exempted from the category of forest produce, in my view, directing the petitioner to give the bank guarantee of Rs. 1,00,000/- appears to be a condition onerous and therefore, the ends of justice would be met if the vehicle in question is released in favour of petitioner on supurdginama.

In the result, the order impugned dated 23.11.2006 passed by the trial court is modified to the extent that instead of giving bank guarantee of Rs. 1,00,000/-, the vehicle in question

shall be released in favour of the petitioner on Supurdinama on his furnishing a solvent security in the sum of Rs. 1,00,000/- to the satisfaction of the trial court

With the above modification, the petition is disposed of.

(H.R.PANWAR),J.

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